

Analysis” are met and will complete the appropriate level of review in accordance with that instruction.

**§§ 4279.61–4279.70 [Reserved]**

**§ 4279.71 Public bodies and nonprofit corporations.**

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A-128 or A-133 or successor regulations or circulars must provide an audit in accordance with the applicable circular or regulation for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A-128 or A-133 or their successors will be considered adequate to meet the audit requirements of the B&I program for that year.

**§ 4279.72 Conditions of guarantee.**

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this part and part 4287 of this chapter will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the

guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its *pro*

*rata* share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

**§§ 4279.73–4279.74 [Reserved]**

**§ 4279.75 Sale or assignment of guaranteed loan.**

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 (interest on State and local banks) or any successor section will not be guaranteed.

(a) *Single note system.* The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form 4279-6, the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

(b) *Multinote system.* Under this option the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be at-

tached to the note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

(c) *After loan closing.* If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, so that the total number of notes issued does not exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

(1) Written approval of the Agency is obtained;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity date of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority is better or remains the same; and

(8) All holders agree.

(d) *Termination of lender servicing fee.* The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

**§ 4279.76 Participation.**

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

**§ 4279.77 Minimum retention.**

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan